CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1929~~ 1930

No. ~~685~~ 43

THE UNITED STATES OF AMERICA, PETITIONER

vs.

IRON CAP COPPER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 5, 1930
CERTIORARI GRANTED MARCH 17, 1930

(34764)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 633

THE UNITED STATES OF AMERICA, PETITIONER

vs.

IRON CAP COPPER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

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103759—30——1

[Caption omitted in printing.]

In United States District Court, District of Massachusetts

No. 3463, Law Docket

IRON CAP COPPER COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

Petition

Filed November 19, 1928

Respectfully represents your petitioner, Iron Cap Copper Company, as follows:

That your petitioner is a corporation duly organized and existing under the laws of the State of Maine; that its principal place
2 of business was in the City of Boston, Massachusetts, until about July 1, 1925, and that since that time its principal place of business has been in the City of Beverly, Massachusetts, both within the district of this honorable court.

2. That the controversy which is the subject matter of this petition arises under the laws of the United States provided for internal revenue and particularly under the act of Congress commonly referred to as the revenue act of 1924, and of certain regulations and rulings of the Treasury Department of the Government of the United States; that the amount of the claim involved in this petition exceeds ten thousand dollars ($10,000) and that the collector of internal revenue by whom the tax hereinafter referred to was collected, and who held that office at the time the obligation herein referred to for payment of interest to your petitioner accrued, is not in office as collector of internal revenue at the time this proceeding is commenced.

3. That your petitioner under and in accordance with the revenue laws of the United States then in force duly filed its returns for income and profits taxes for the year 1918; that following the filing of said returns income and profits taxes were assessed or purported to be assessed upon your petitioner for said year, 1918, in the sum of one hundred eighty-three thousand ninety-nine dollars and seventy-eight cents ($185,099.78); that subsequently, to wit, in or about May, 1921, an additional income and profits tax was assessed or purported to be assessed for the year 1918 upon your petitioner in the sum of forty-eight thousand five hundred thirty-nine dollars and ninety-four cents ($48,539.94), said original and additional taxes aggregating two hundred thirty-one thousand six hundred thirty-nine dollars and seventy-two cents ($231,639.72); that said original tax of one hundred

eighty-three thousand ninety-nine dollars and seventy-eight
3 cents ($183,099.78) was duly paid by your petitioner to the collector of internal revenue as Boston, Massachusetts, on the following dates and in the following amounts:

March 15, 1919	$50,000.00
June 16, 1919	41,549.89
September 15, 1919	46,000.00
December 15, 1919	45,549.89
Total	183,099.78

but that said additional tax or forty-eight thousand five hundred thirty-nine dollars and ninety-four cents ($48,539.94) was not paid.

4. That petitions for abatement, credit, and refund with respect to said taxes for 1918 were duly and seasonably filed by your petitioner and that on or about March 29, 1924, the Commissioner of Internal Revenue determined that the correct tax liability of the petitioner for said year 1918 was fifty-one thousand three hundred seventeen dollars and six cents ($51,317.06), indicating an overassessment for said year of one hundred eighty thousand three hundred twenty-two dollars and sixty-six cents ($180,322.66), and on information and belief that an overassessment in the said amount for 1918 was allowed with other items to various taxpayers on a schedule of overassessments signed by the commissioner on said date, March 29, 1924, and was at some time thereafter forwarded to the collector of internal revenue at Boston, Massachusetts; on information and belief that thereafter and subsequent to June 2, 1924, the effective date of the revenue act of 1924, to wit, on or about July 14, 1924, the collector of internal revenue at Boston reported to the commissioner with respect to said total overassessment upon your petitioner of one hundred eighty thousand three hundred twenty-
4 two dollars and sixty-six cents ($180,322.66) that the amount of forty-eight thousand five hundred thirty-nine dollars and ninety-four cents ($48,539.94) (being the amount of the said additional assessment of May, 1921) should be abated; that one hundred two thousand nine hundred thirty-one dollars and eighty-nine cents ($102,931.89) should be credited on taxes of other years, to wit, the years 1913 to 1917, inclusive, and that twenty-eight thousand eight hundred fifty dollars and eighty-three cents ($28,850.83) should be refunded; that said collector further reported to the commissioner under said date, July 14, 1924, that the said amounts indicated for abatement and credit had been so applied; that also under said date the said collector prepared a subsidiary or secondary schedule of refunds and credits as prescribed by said commissioner, to which were transferred the net amounts refundable and amounts credited and on information and belief that the said amount of one hundred two thousand nine hundred thirty-one dollars and eighty-nine cents ($102,931.89) was credited by the collector to the taxes then due from the petitioner for other years on

or about said date, July 14, 1924, and subsequent to June 2, 1924, the effective date of said revenue act of 1924.

5. On information and belief that the taxes against which the said credit was taken were additional assessments for the years 1913 to 1917, inclusive, as follows:

Tax year	Date of assessment	Amount credited	Tax year	Date of assessment	Amount credited
1916a	May, 1921	$59.85	1915a	March, 1924	$14.74
1917a	May, 1920	50,962.85	1914a	March, 1924	17.30
1917a	May, 1921	20,061.60	1913a	March, 1924	20.04
1917a	June, 1918	6,300.77			
1917a	March, 1924	25,476.33	Total		102,931.89
1916a	March, 1924	18.41			

5 6. That on or about October 31, 1927, request was made of the Commissioner of Internal Revenue on behalf of your petitioner for allowance of interest on the amount of said credits of one hundred two thousand nine hundred thirty-one dollars and eighty-nine cents ($102,931.89) and for payment of such interest, and that on or about February 21, 1928, the commissioner declined to allow such interest on the ground that no interest was legally due.

Wherefore your petitioner prays:

(1) That this honorable court adjudicate that your petitioner is entitled to interest on said amounts of credits at the rate of six per centum (6%) per annum from the dates when such tax for the year 1918 was paid as aforesaid to the dates of the additional assessments against which said credits were applied.

(2) That a judgment or decree be entered by this honorable court against the respondent and in favor of your petitioner for the amount of such interest.

(3) That such order or orders as may be deemed necessary or proper in order to require and enforce the payment of the amount of such judgment or decree to your petitioner be issued to the Treasurer of the United States and/or such other proper disbursing officers or agents as the court may determine.

(4) For such other relief as to this honorable court may seem proper in the premises.

IRON CAP COPPER COMPANY,
By s/ ROLAND H. KNIGHT,
Its Treasurer.
TYLER, EAMES, WRIGHT & HOOPER,
BURTON E. EAMES,
Attorneys.

6 [*Duly sworn to by Roland H. Knight; jurat omitted in printing*]

In United States District Court

Answer

Filed December 19, 1928

Now comes the defendant and for answer to the plaintiff's petition denies each and every material item, allegation, count, and particular in the petition contained.

By its attorneys.

FREDERICK H. TARR,
United States Attorney.
By J. DUKE SMITH,
Special Asst. to the U. S. Attorney.

In United States District Court

Agreed statement of facts

Filed March 29, 1929

It is hereby stipulated and agreed, by and between the parties hereto by their respective attorneys, that the following
7 facts, so far as competent and material, shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

I

Petitioner, Iron Cap Copper Company, is and at all times was a corporation organized and existing under the laws of the State of Maine with its principal office and place of business in the city of Boston in the State of Massachusetts until on or about July 1, 1925, and that since that time its principal office and place of business has been in the city of Beverly in the State of Massachusetts.

II

Petitioner filed income-tax returns for the years 1913 to 1916, inclusive, and paid the taxes shown therein.

III

On April 5, 1918, petitioner filed income and excess profits tax returns for the year 1917, from which it appeared that the tax due thereon was $78,526.52, which tax was paid on June 25, 1918. Subsequent thereto the Commissioner of Internal Revenue made on August 20, 1918, duplicate additional assessments of tax for the said year in the amounts of $36,258.60, $36,250.60 of which was abated on

September 30, 1919, and $29,957.83 of the other $36,258.60 was paid on August 18, 1920, leaving an unpaid balance of $6,300.77, which was subsequently included in a claim for credit filed by the petitioner.

IV

8 On June 24, 1919, petitioner filed an income and profits tax return for the year 1918, from which it appeared that the tax due thereon was $183,099.78, which tax was paid as follows:

March 19, 1919	$50,000.00
June 24, 1919	41,549.89
September 17, 1919	46,000.00
December 17, 1919	45,549.89
Total	183,099.78

V

After an examination and an audit of the income and excess-profits tax returns for the year 1917, the Commissioner of Internal Revenue, in a letter dated March 3, 1920, signed by G. V. Newton, acting assistant to the commissioner, notified claimant of his determination, which is as follows: Year, 1917, underpayment, $50,962.85.

VI

On May 25, 1920, the Commissioner of Internal Revenue made an additional assessment of the underpayment of tax for the year 1917 in the amount of $50,962.85.

VII

After an examination and an audit of the income-tax return for the year 1916, income and excess profits tax returns for the year 1917, and the income and profits tax return for the year 1918, the Commissioner of Internal Revenue, in a letter dated March 31, 1921, signed by E. H. Batson, acting deputy commissioner, notified claimant of his determination, which is as follows:

9

Year:	Underpayment
1916	$59.85
1917	20,061.60
1918	48,539.94
Total	68,661.39

VIII

On June 11, 1921, the Commissioner of Internal Revenue made additional assessments of the underpayment of taxes for the years 1916 to 1918, inclusive, in the amount of $68,661.39 as shown in Paragraph VII above.

IX

On August 20, 1921, petitioner filed two claims for credit of:

(1) $83,424.95, 1918 income and profits tax, to be applied as a credit against the additional assessment of income and excess-profits taxes for the year 1917 as follows:

Unpaid balance of the June 1918 additional assessment	$12,400.50
Additional assessment made July, 1920	50,962.85
Additional assessment made August, 1921	20,061.60
Total	83,424.95

A copy of the claim for credit is hereto attached, marked "Exhibit 1" and made a part hereof;

(2) $59.85, 1918 income and profits tax to be applied as a credit against the additional assessment of tax for the year 1916. A copy of the claim for credit is hereto attached, marked "Exhibit 2" and made a part hereof.

10 On the same date petitioner filed a claim for the abatement of $48,539.94, income and profits tax for the year 1918, referred to in Paragraph VII above.

X

After an examination and an audit of the income tax returns for the year 1913 to 1916, inclusive, income and excess-profits tax returns for the year 1917 and income and profits tax return for the year 1918, the Commissioner of Internal Revenue, in a letter dated January 28, 1924, signed by J. G. Bright, deputy commissioner, notified claimant of his determination, which is as follows:

Year	Underpayment	Overassessment	Year	Underpayment	Overassessment
1913	$20.04		1917	25,476.33	
1914	17.30		1918		$180,322.66
1915	14.74				
1916	18.41		Totals	25,546.82	180,322.66

XI

On March 20, 1924, the Commissioner of Internal Revenue made additional assessments of the underpayment of taxes for the years 1913 to 1917, inclusive, in the amount of $25,546.82, as shown in Paragraph X above.

XII

On March 29, 1924, the Commissioner of Internal Revenue approved a schedule of overassessments known and designated as Schedule IT:A-9751 on Form 7805. Said schedule of over-

11 assessments embraced, among other overassessments, an overassessment in favor of the petitioner in the amount of

$180,322.66 for the year 1918. Said schedule of overassessments was transmitted to the Collector of Internal Revenue for the District of Massachusetts for his action in accordance with the direction appearing thereon.

XIII

Said Collector of Internal Revenue complied with the direction appearing thereon, and on July 14, 1924, signed the certificate thereon stating that the items had been checked against the accounts of the respective taxpayers; that the amounts indicated had been applied as abatements and credits against their accounts and returned said schedule to the Commissioner of Internal Revenue together with schedule of refunds and credits known and designated as Schedule IT:R–9751 on Form 7805A.

XIV

A certified copy of Schedules IT:A–9751, IT:R–9751, and certificate of overassessment for the year 1918 in the amount of $180,322.66 is hereto attached, marked "Exhibit 3," and made a part hereof.

XV

The overassessment of $180,322.66 for the year 1918 was adjusted as follows:

12

Amounts credited	Year against which credited	Dates of assessment
$6,300.77	Add'l assessment 1917	8-18-18
50,992.85	" " "	5-25-20
59.85	" " 1916	6-11-21
20,061.60	" " 1917	6-11-21
20.04	" " 1913	3-20-24
17.30	" " 1914	3-20-24
14.74	" " 1915	3-20-24
18.41	" " 1916	3-20-24
25,476.33	" " 1917	3-20-24
102,931.89	total amount credited.	
48,539.94	additional assessment of tax for the year 1918 abated.	
28,850.83	approved for refundment purposes.	
180,322.66	amount of overassessment for 1918.	

XVI

On August 7, 1924, the Commissioner of Internal Revenue approved a schedule of refunds and credits, IT:R–9751, showing the amount refundable as $28,850.83 and authorized the disbursing clerk of the Treasury Department to issue a check for that amount. On September 16, 1924, a Treasury check in the amount of $28,850.83 was mailed to the petitioner through the office of the collector of internal revenue at Boston, Massachusetts.

XVII

In a letter dated August 31, 1927, the petitioner, through its attorney, requested the Commissioner of Internal Revenue to allow interest on the overassessment in the amount of $180,322.66 for the
13 year 1918. In a letter dated February 21, 1928, the petitioner was advised by the Commmissioner of Internal Revenue of the allowance of interest in the amount of $8,033.57 on $28,850.83, the amount refunded, from December 17, 1922, the date of payment, to August 7, 1924, the date of allowance of the refund.

XVIII

On May 11, 1928, the Commissioner of Internal Revenue approved a schedule of overassessments known and designated as Schedule IT–29959 on Form 7920, based on the computation and allowance of interest in the amount of $8,033.57. A Treasury check for the amount referred to above, $8,033.57, was mailed to the petitioner on May 15, 1928.

XIX

No interest has been assessed or paid on the underpayment of taxes for the year 1913 to 1918, inclusive, referred to in paragraphs 5, 7, and 10.

XX

No further interest has been allowed or paid on account of the overassessment of $180,322.66 for the year 1918.

XXI

That the collector of internal revenue by whom the taxes herein referred to were collected and who held that office at the time of the determination of the overassessments for 1918 and of the application of the overpayments of such overassessments as credits on taxes for other years, all as herein set out, resigned said office on November 30, 1925, and was not in office as collector of internal revenue at the time when the petition herein was filed.

BURTON E. EAMES,
Attorney for Petitioner,
FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.,
Attorneys for Defendant.

CERTIFICATES 2d

I certify that an examination of the records of the Commissioner's Office shows the following facts as to the assessment and payment of the tax:

ASSESSMENT OVERPAID

NAME OF TAXPAYER.	CHARACTER OF ASSESSMENT AND PERIOD COVERED.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.	DATE PAID.
Iron Cap Copper Co	Corp Inc	4c	40	2	63		182099 78	
	1917						50000 00	3-19-19
50 Congress St	403-15-20	6	32318.47	Jan	5	20	41549 89	6-24-19
	1919 7-30-20	6	34094.88	July	9	20	46000 00	9-17-19
Boston	47c 7-30-20	6	32,318.47	July	9	20	45549 89	12-17-19
	47c F-10-21 for	54	31936	9	9	21		
	1918 (war) 8-10-21 for		3424.95					
	1918 Add'l May 1921							
	47 - 8/20/21 for		4,2-3424.95				9/9/21	

Assessment Clerk, Internal Revenue Bureau. Collector of Internal Revenue.

ASSESSMENT TO BE CREDITED

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.
Iron Cap Copper Co	Corp Inc	1-22-20 to 5-31-21	1918	1921	May	1439	3	$74526.52 (Pd 6/14)
	1917 added							$20,061.60
50 Congress St	1917 Addl #1751053		(1917)	1920	May	39	9	50 968.85
Boston	47a - 7-30-20 for 32,318.47 MR							
	47a - 7-30-20 - 31.09488							
	47 Ref. 63362.35 - MR							

Assessment Clerk, Internal Revenue Bureau. Collector of Internal Revenue.

Form 47 A

District .....

Abatement Order No. .....

.....
(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., 19....

Claim examined by—

Amount claimed, $.....

COMMITTEE ON CLAIMS:

ASSESSMENT OVERPAID

NAME OF TAXPAYER.	CHARACTER OF ASSESSMENT AND PERIOD COVERED.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.	DATE PAID.
Iron Cap Copper Co	Corrected 4c 40 2803						182099 71	
	1917						50000 00	3-19-19
50 Congress St	403-15-20 for 32,318.47						46549 89	6-24-19
	(469: 7-30-20 for 31,044.88)						46000 00	9-17-19
Boston	47c 7-30-21 for 54,319.36						45549 89	12-17-19
	47A(Corr) 8-10-21 for 34,24.95							
	1918 Addl. May 1921							
	47-8/20/21 for 48,038.96							

Assessment Clerk, Internal Revenue Bureau.

9/9/21

Collector of Internal Revenue.

ASSESSMENT TO BE CREDITED

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.
Iron Cap Copper Co	Corrected 4c 40 2803	1-30-53	(1918)	April		1439	3	74526.52 (9/6/21)
	1917 Addl	May 1921		111	22			20,061.60
50 Congress St	1917 Addl #1751053	(1917)	1920	May		59	9	50 968.85
Boston	47a-7-30-20 for 32,518.47							
	47a-7-30-20 - 31.044.88)							
	47 Rej. 63362.35-m90							

Assessment Clerk, Internal Revenue Bureau.

Collector of Internal Revenue.

Form 47 A

District .....

Abatement Order No. .....

.....

(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., 19....

Claim examined by—
Claim approved by—
Chief of Division.

Amount claimed, $.....

Amount allowed, $.....

Amount rejected, $.....

COMMITTEE ON CLAIMS:

.....

.....

.....

14a

EXHIBIT 1

Claim for credit—Taxes paid in excess

561982 22612

Treasury Department,
U. S. Internal Revenue.
Form 47 A.—March, 1919.

Received, Claim Dept., Aug. 20, 1921.
Recorded Nov. 21, 1923, Claims Control Section.

STATE OF MASS.,
County of Suffolk, ss:

Iron Cap Copper Company, 50 Congress St., Boston, Mass.

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete.

1. Business engaged in by claimant, copper mining, mass.
2. Character of assessment or tax, income and profits.
3. Amount of tax paid, $183,099.78; taxable year, 1918.
4. Portion of No. 3 claimed as a credit, $83,424.95.
5. Unpaid assessment against which credit is asked (see note), $83,424.95; taxable year, 1917.

Deponent verily believes that the amount stated in item 4 should be credited, and claimant now asks and demands credit of said amount for the following reasons:

This claim is filed in connection with the following claims: Abatement, $48,539.94; 1918 assessment, additional Aug. 13, 1921; refund, $54,319.36, 1918 overpayment; refund, $19,636.82, 1918 overpayment; credit, $59.85, 1918 overpayment against 1916 add'l assessment of Aug. 13, 1921; and is based upon statements and computations set forth in a letter to the department of this date, copy of which is attached hereto and made a part hereof.

Evidence showing payment of 1918 tax, $183,099.78 accompanies claim for refund filed this date.

NOTE.—The total unpaid assessments, item 5, comprise the following: June, 1918, $12,400.50 (unpaid portion of assessment of $36,258.60); July, 1920, $50,962.85; Aug., 1921, $20,061.60; total, $83,424.95, all additional.

(Signed) ROLAND H. KNIGHT,
Treasurer.

Sworn to and subscribed before me this 18th day of August, 1921.

[SEAL.] HERBERT N. SMITH,
Notary Public.

14c EXHIBIT 2

Claim for Credit—Taxes paid in excess

561981 22605

Treasury Department,
U. S. Internal Revenue.
Form 47 A.—March, 1919.

Received, Cl. Dept., Aug. 20, 1921.
Recorded Nov. 21, 1923. Claims Control Section.

STATE OF MASS.,
County of Suffolk, ss:

Iron Cap Copper Company, 50 Congress St., Boston, Mass.

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete.

1. Business engaged in by claimant, copper mining, mass.
2. Character of assessment or tax, income and profits taxes.
3. Amount of tax paid, $183,099.78; taxable year, 1918.
4. Portion of No. 3 claimed as a credit, $59.85.
5. Unpaid assessment against which credit is asked, Aug., 1921, $59.85; taxable year, 1916.

Deponent verily believes that the amount stated in item 4-should be credited, and claimant now asks and demands credit of said amount for the following reasons:

This claim is filed in connection with the following claims: Abatement, $48,539.94, 1918 assessment, additional Aug. 13, 1921: refund, $54,319.36, 1918 overpayment: refund, $19,636.82, 1918 overpayment; credit, $83,424.95, 1918 overpayment against 1917 add'l assessments of June, 1918, $12,400.50 (unpaid portion of assessment of $36,258.60); July, 1920, $50,962.85; Aug., 1921, $20,061.60: and is based upon statements and computations set forth in a letter to the department of this date, copy of which is attached hereto and made a part hereof.

Evidence showing payment of 1918 tax, $183,099.78, accompanies claim for refund, $54,319.36, filed this date.

(Signed) ROLAND H. KNIGHT.
Treasurer.

Sworn to and subscribed before me this 18th day of August, 1921.
[SEAL.] HERBERT N. SMITH,
Notary Public.

CERTIFICATES

I certify that an examination of the records of the (Collector's / Commissioner's) Office shows the following facts as to the assessment and payment of the tax:

ASSESSMENT OVERPAID

NAME OF TAXPAYER.	CHARACTER OF ASSESSMENT AND PERIOD COVERED.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.		DATE PAID.
	1918 Corp. Inc.		1919	#403803			183099	78	
Iron Cap Copper Co.,	46: 3-15-20 for $2318.47 cl.					8d.	50000	00	3-19
	47A: 7-30-20 - 31044.88 (Dr.)					-	41549	89	6-24
50 Congress St.,	47A: " - 32318.47 in R39-20					-	46000	00	9-17
Boston, Mass.	46: 8-20-21 - $19,636.82 O/S 9-9-21					"	45549	89	12-17
47A: 8-20-21 - 59.85 (Dr.) (C. 917	47A: (Dr.) 8-20-21 - $3,424.95 (Cr.) 1917 Addl O/S 9-9-21								
Addl) O/S 10-4-21	1918 Addl.		May 1921	111	3		48539.94		
17-8/23/21	47-8/20/21 for $48539.94 - 9/9/21								

Assessment Clerk, Internal Revenue Bureau.

Collector of Internal Revenue.
10-4-21 CEL

ASSESSMENT TO BE CREDITED

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.
Iron Cap Copper Co.,	1916 Addl			1921	May	111	1	59.85
50 Congress St., Boston	Corp. Inc.	47A: 8-20-21 for $59.85 O/S 10-5-21						

Assessment Clerk, Internal Revenue Bureau.

Collector of Internal Revenue.
10-5-21 CEL

Form 47 A

District .....

Abatement Order No. .....

(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., 19....

Claim examined by—
Claim approved by—
Chief of Division.

Amount claimed, $.....

Amount allowed, $.....

Amount rejected, $.....

COMMITTEE ON CLAIMS:

.....

.....

.....

15 United States of America—General Accounting Office

Pursuant to the act of June 10, 1921, 42 Stat. 24, I hereby certify that the annexed documents, numbered 1–1, 1–2, and 2–1 to 2–8, inc., are true copies of the official documents now on file in the General Accounting Office in the following case:

Iron Cap Copper Company

In witness whereof, I have hereunto set my hand and caused the seal of the General Accounting Office to be affixed this 6th day of February, in the year 1929, at Washington.

[SEAL.] DUSTIN R. GINN,
Assistant Comptroller General of the United States.

General Accounting Office—Form 7a.

16 Exhibit C

Item =6—Iron Cap Copper Company—Credits

$25,476.33	Mar., '24,	P1–1	Sp23—	1917a	3/29/24.		
18.41	"	"	1–0	"	"	—1916a	"
14.74	"	"	0–9	"	"	—1915a	"
17.30	"	"	0–8	"	"	—1914a	"
20.04	"	"	0–7	"	"	—1913a	"
59.85	May, '21,	P111–1—	1916a	8/13/21.			
50,962.85	May, '20,	P39–9—	1917a	7/21/20.			
20,061.60	May, '21,	P111–2—	1917a	8/13/21.			
6,300.77	June, '18,	P137–6—	1917a	8/27/18.			
102,931.89							

16a Treasury Department
U. S. Internal Revenue
Service
Form 7805
Form approved by Comptroller General
Feb. 5, 1923

EXHIBIT 3

Schedule of overassessments and allowance of abatements, credits, refunds, and related claims, if any

Income tax unit—Authorization of commissioner

Original.—Voucher to General Accounting Office.—C-21048.

Schedule No. IT-A.
Sheet 1 of 2 sheets.

IMMEDIATE.—This schedule must be executed and all required steps taken without delay.—*Commissioner of Internal Revenue.*

To the Collector, District of Massachusetts:

The amounts listed in column 4 as overassessments or reductions of tax liability are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates of Overassessment" or "Notices of Adjustment of Refund" attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts by which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate *memorandum* made upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Mar. 29, 1924.

D. H. BLAIR,
Commissioner of Internal Revenue.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the available facts and the law. The overassessments or reductions in tax liability appearing in column 4 are accordingly recommended for allowance.

Mar. 29, 1924.

J. G. BRIGHT,
Deputy Commissioner.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

July 14, 1924.

M. E. NICHOLS,
Collector, District of Mass.

Collector, District of Mass.

Item No.	Certificate of overassessment or claim number	Name and address of taxpayer	Overassessments or reductions of tax liabilities (amount)	List, page, and line, or account number	Taxable year	Entries to be made by the collector: Abatement (amount)	Overpayment (amount)	Credit (amount carried to Form 7805-A)	Account credited; list, page, and line	Due date of items against which credit was made	Net amount refundable carried to Form 7805-A	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
6	241355	Iron Cap Copper Co	$180,422.66	Mar. '21, p. 411, 13	18	$48,539.94	$131,782.72	See attached for credits			$28,850.83	" "
7	241467	Iron Cap Copper Co	258.29	June, '21, p. 100, 19	19	258.29						" "

Treasury Department
U. S. Internal Revenue Service
Form 7805-A
Form approved by Comptroller General
Feb. 5, 1923

Immediate.—This schedule must be executed and all required steps taken without delay.—Commissioner of Internal Revenue.

Schedule of refunds and credits—Illegal or erroneous collections—Income tax unit

Original—Voucher to General Accounting Office—C 22868.

Schedule No. IT R 9751
Dist. of Mass.
D. C. Voucher No. 184

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

July 14, 1924.

M. E. Nichols,
Collector, District of Mass.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

August 7, 1924.

J. G. Bright,
Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

August 7, 1924.

D. H. Blair,
Commissioner of Internal Revenue.

Unit	Notations	Date
A & C	Hz	8/11/24

Item No.	Certificate of overassessment or claim number	Name and address of taxpayer	Net amount refundable	Amount credited	Not to be used by collector: Interest accrued	Not to be used by collector: Total refundable	Date of final payment of accounts from which credits were transferred and overpayments found	Not to be used by collector Refunding taxes illegally collected: 1925 and prior years	19 ..	19 .	Paid by disbursing clerk, Treasury Department, by checks dated Aug. 21, 1924 numbered as follows:	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
6	211358	Iron Cap Copper Co .	$28,850.83	$102,931.89		$28,850.83	12-17-19 .	$28,850.83			470668	

16c

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington.

Income-tax unit—C-22868.
IT:NR:F-1
LHR-2242.

Certificate of overassessment

Number: R-241355.
Allowed: $180,322.66
Schedule No. 9751.

IRON CAP COPPER COMPANY,
50 Congress Street, Boston, Massachusetts.

SIRS: An audit of your income-tax return, Form 1120, and a consideration of all the claims (if any) filed by you for the year 1918 indicates that the tax assessed for this year was in excess of the amount due:

Tax assessed $403,803	$183,099.78
" " May, 1921, list, page 111, line 3	48,539.94
Total	231,639.72
Corrected tax liability	51,317.06
Overassessed	180,322.66

For details of changes in your tax liability, see the attached statement.

jn-8.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By S. ALEXANDER,
Head of Division.

Abated: $48,539.94.

Credited: $59.85, 1916a, May, '21, p. 111-1; $50,962.85, 1917a, May, '20, p. 39-9; $20,061.60, 1917a, May, '21, p. 111-2; $6,300.77, 1917a, June, '18, p. 137-6.

Refunded: $28,850.83.

Credited: $25,476.33, 1917a, Mar., '24, p. 1-1; $18.41, 1916a, Mar., '24, p. 1-0; $14.74, 1915a, Mar., '24, p. 0-9; $17.30, 1914a, Mar., '24, p. 0-8; $20.04, 1913a, Mar., '24, p. 0-7.

(7776-A) Revised July, 1923.

Record of assessments and payments

[Entries to be made by the collector according to instructions]

	Character of assessment and period covered	List	Year	Month	Account No. or		Amount assessed	Payments	
					Page	Line		Date paid	Amount paid
Original assessment.	Corp. Inc., 1918.	Annual.	1919	.....	403	803	$183,099.78	3-19-19 6-24-19 9-17-19 12-17-19	$50,000.00 41,549.89 46,000.00 45,549.89
									183,099.78
Additional assessment.	.....do.....	Add'l.	1921	May..	111	3	48,539.94	Alt. IT-A-9751.	

Tax was (was not) paid under "specific" (written) protest; no record.

If so paid, collector should attach such protest to this certificate.

The records of this office are as given above.

MALCOLM E. NICHOLS,
Collector of Internal Revenue.
By C. E. QUIGLEY, *Clerk.*

Date claim filed: 3-15-20; 7-20-20; 8-20, 1921.

17 IT:NR:F-1.
LHR-App.

Statement, Iron Cap Copper Company, 1918

You are advised that your application under section 327 for assessment of the war and excess profits tax as prescribed by section 328 of the revenue act of 1918 has been denied. Your statutory invested capital under section 326, as finally determined, is set out in detail below.

Net income shown by office letter of December 23, 1922		$289,625.13
Less:		
Depreciation of office letter December 23, 1922	$23,832.55	
Depreciation allowed	29,281.95	
		5,399.40
Balance of income for 1918		284,225.73
Less loss sustained in 1919		121,510.91
Net income subject to tax (1918)		162,714.82
Invested capital:		
Capital stock January 1, 1918		959,052.25
Surplus adjusted as at January 1, 1917	$235,986.89	
Add income, 1917	604,197.37	
Total	840,184.26	
Less adjustments shown in office letter of March 31, 1921, including dividends, income tax, etc	350,217.16	
		479,967.10
Total		1,439,019.35

18	Add:		
	Reserve for depletion office letter March 31, 1921	$180,838.93	
	Reserve for depletion corrected	179,295.17	
			$1,543.76
	Reserve for depreciation December 31, 1916, shown by office letter March 31, 1921	10,164.41	
	Reserve for depreciation corrected	3,335.51	
			6,828.90
	Total		1,[illegible]392.01
	Iron Cap Copper Company (brought forward)		1,447,392.01
	Less changes during the taxable year:		
	1917 income tax, $211,285.90 prorated for 200 days	$115,773.10	
	Dividends—		
	January 1, 1918	36.95	
	January 2, 1918, $72,405.00, prorated	72,206.63	
	February 1, 1918, $36,212.00, prorated	33,136.69	
	Stock purchased February 7, 1918, $22.00, prorated	19.76	
	Dividend March 1, 1918, $35,218.00, prorated	30,363.58	
	Dividends in excess of available income as shown by attached statement—		
	June 29, 1918	13,319.46	
	August 1, 1918	466.03	
	September 2, 1918	721.30	
19	October 1, 1918	1,353.04	
	November 1, 1918	541.46	
	December 2, 1918	266.29	
	Stock purchased July 1, 1918, $18,841.63, prorated	8,924.21	
	Total	277,128.50	
	Less stock sold December 5, 1918, $40,000.00 prorated	2,958.90	
			274,169.60
	Invested capital with inadmissibles included		1,173,222.41
	Product: Inadmissable (rate .031961)		37,484.46
	Invested capital adjusted		1,135,736.95
	Excess profits credit		93,858.36
	War profits credit		716,578.70
	Excess profits and war profits		36,912.99
	Less tax on income from gold exempt		171.04
	Balance of excess-profits and war-profits tax		36,741.86
	Iron Cap Copper Company (brought forward)		36,741.86
	Income tax:		
	Net income	$162,714.81	
	Less—		
	Interest from United States obligations not exempt	$2,512.92	
	War-profits and excess-profits tax	36,741.86	
	Exemption	2,000.00	
		41,254.78	
	Income taxable at 12%	121,460.04	
20	Income tax		14,575.20
	Total		51,317.06

Tax assessed on original return, account No. 40343	$183,099.78	
Tax assessed on May (1921) list, page 111, line 3	48,539.94	
		$231,639.72
Overassessment		180,322.66

IT: NIL: F-1
LHR-App.

Statement of dividends in excess of available income—Iron Cap Copper Company, Boston, Massachusetts

Nontaxable income		87,597.50
Taxable income corrected		284,225.73
Depletion on cost	$199,967.67	
Depletion on discovery	347,817.35	
		147,849.68
Total income available for dividends before taxes are deducted		439,672.91
Corrected tentative tax		49,780.78
Income available for dividends		389,892.13
Income available for one day		1,068.20
Income available April 1, 1918 (ninety-days)		96,138.00
Dividend paid April, 1918		36,218.75
Balance		59,919.25
21 Earnings April 1, 1918, to May 1, 1918		32,046.00
Total available May 1, 1918		91,965.25
Dividend paid May 1, 1918		36,224.75
Balance		55,740.50
Earnings May 1, 1918, to June 1, 1918		33,114.20
Earnings available June 1, 1918		88,854.70
Dividend paid June 1, 1918		36,224.75
Balance		52,629.95
Earnings from June 1, 1918, to June 29, 1918 (twenty-eight days)		29,909.60
Total income available June 29, 1918		82,539.55
Total income available June 29, 1918 (forwarded)		82,539.55
Dividend paid June 29, 1918		108,677.25
Dividend from capital June 29, 1918		26,137.70
Prorated for 186 days		13,319.46
Total net income		439,672.91
Less tentative tax, second computation		51,289.63
Income available for dividends		388,383.28
Income available for 1 day		1,064.06
Income available June 29, 1918, to August 1, 1918 (thirty-three days)		35,113.98
Dividend paid August 1, 1918		36,225.75
Dividend from capital August 1, 1918		1,111.77
22 Prorated for one hundred fifty-three days		466.03

Income August 1, 1918, to September 2, 1918 (thirty-two days)	$36,225.75
Dividend paid September 2, 1918	34,049.92
Dividend from capital September 2, 1918	2,175.83
Prorated for one hundred and twenty-one days	721.30
Income September 2, 1918, to October 1, 1918 (twenty-nine days)	30,857.74
Dividend paid October 1, 1918	36,225.75
Dividend from capital	5,368.01
Prorated for ninety-two days	1,353.04
Income October 1, 1918, to November 1, 1918 (thirty-one days)	32,985.86
Dividend paid November 1, 1918	36,225.75
Dividend from capital X	3,239.89
Prorated for sixty-one days	541.46
Income November 1, 1918, to December 2, 1918 (thirty-one days)	32,985.86
Dividend December 2, 1918	36,225.75
Dividend from capital	3,238.89
Prorated for thirty days	266.29

23 In United States District Court

Minute entry of hearing

On the said 29th day of March said cause is set down for hearing and fully heard by the court on the aforementioned agreed statement of facts, the Honorable James M. Morton, jr., district judge, sitting.

In United States District Court

Request for findings of fact and conclusions of law, filed Mar. 29, 1939

Findings of fact

The plaintiff and defendant having filed an agreed statement of facts, the defendant requests the court to find the facts therein set forth as facts in this case.

The defendant believing the evidence in the case to have established the following additional facts with reference to the progedure relating to the allowance of credits in the Bureau of Internal Revenue, requests the court to find:

1. Under procedure in effect prior to the adoption of the certificates of overassessment and schedules of overassessment, credits were allowed upon specific credit claims filed by taxpayer and when allowed were listed upon specific credit schedules to collectors and the allowed credits were applied or posted to taxpayer's accounts by collectors. The collectors did not return such old procedure schedules to the Commissioner of Internal Revenue or certify to him on subsidiary schedules that such credits had been made, allowed or posted as under the new or present procedure.

2. The Bureau of Internal Revenue has uniformly and consistently maintained that a credit is allowed when the commissioner signs the schedule of reductions of tax liability or schedule of overassessments, and every case in which interest has been allowed on credits by the Bureau of Internal Revenue has been adjusted on this basis.

24 3. General notice of the certificate of overassessment and schedule of overassessment procedure was given through the issuance by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury of Treasury Decision 3260, dated December 8, 1921.

4. The purpose of the new procedure was thus announced, for the more expeditious handling of claims, to provide for the refund or credit of overpayments where no claims were filed, to provide for more rapidly adjusting the volume of claims on hand and to reduce causes of delay to a minimum.

5. Another reason not specifically stated in the Treasury Decision was that the law, section 252 of the revenue act of 1918, provided that overpayments of income and profits taxes should be credited against the taxes then due and the balance immediately refunded. The old procedure frequently resulted in the payment of refunds to taxpayers who owed taxes for other years to which credits should be applied.

6. Under the new procedure a certificate of overassessment was issued for the amount overassessed which was allowed by the commissioner on schedule Form 7777, and which was by him transmitted to the collector of internal revenue with directions to abate or credit as disclosed by the status of the taxpayer's account. The collector was directed to check the allowed overassessment items against the taxpayer's accounts and to make appropriate entries indicating the application by him by credit, and if any amounts were to be refunded to prepare a schedule of refunds.

7. This schedule of refunds was designated by the Commissioner of Internal Revenue as a subsidiary schedule and related solely to refunds.

25 8. Upon application of the amounts of overassessments as abatements or credits, the collectors forwarded the certificates of overassessments to the taxpayers, but in a case in which any amount of overpayment was to be refunded the collector was not to forward the certificates to the taxpayer but to return them with a schedule of refundable amounts to the commissioner for enclosure with a check to the taxpayers drawn by the disbursing clerk. The purpose of the return of the certificates involving refunds was to avoid the preparation of additional letters of transmittal for checks and that the certificates might complete the transaction by advising the taxpayer as to the overpayment, state the reason therefor and accompany the check in payment of the refund indicated.

9. The schedule of refunds related to refund and interest items only—payments to be made from the Treasury, and had no relation

to amounts credited, nor to the allowance or approval thereof, which were not originally listed thereon for any purpose.

10. The certificate of overassessment procedure was put into actual operation as soon as possible after December 16, 1921, the first schedule having been issued on February 2, 1922. It was then impossible to comply at the time of adjusting the schedules of overassessment with the requirement of section 1324 (a) of the revenue act of 1921 to allow interest on allowed refund or credit claims. Accordingly collectors were directed to return the original certificate of overassessment with Form 7777 (a) in all cases where the refund or credit, or both, amounted to $5,000 or more. This was for the purpose that the check, if any, for interest on the overpayment which was credited might accompany the same to the taxpayer.

11. Forms 7777 and 7777 (a) were subsequently modified to more conveniently effect payment of refunds and interest on credits and refunds and became Forms 7805 and 7805 (a).

26 12. Where the subsidiary schedule prepared by the collector disclosed no refundable items, the only purpose for which the commissioner signed the schedule of refunds was to allow interest, if any, on items which had been credited. In the event there were neither refunds nor interest on credits to be paid, the commissioner's signature did not then appear on the refund schedule.

Conclusions of law

And I find as conclusions of law:

1. That the sum of $102,931.89 of the total overassessment of $180,322.66 for the year 1918 credited against taxes due for other years was allowed as a credit by the Commissioner of Internal Revenue on March 29, 1924.

2. That the defendant is entitled to judgment dismissing plaintiff's petition and for costs and disbursements of this action.

By his attorneys.

FREDERICK H. TARR,
United States Attorney.
By J. DUKE SMITH,
Special Asst. to the United States Attorney.

Said cause is thence taken under advisement, when, to wit, April 3, 1929, an opinion of the court is announced.

27 In United States District Court

Special findings of fact

Filed June 24, 1929

In addition to the statements of fact in the opinion rendered by me on April 3, 1929, I find the facts as set forth in the agreed statement of facts filed herein. I also make the following findings of

fact. Evidence of previous practice of the commissioner's office was admitted over the objection of the petitioner on the ground that it was immaterial.

Prior to the adoption of the certificate of overassessment procedure on February 2, 1922, no allowance of overassessments was made except upon claims filed by taxpayers either for credit, abatement or refund. If a credit claim was filed and allowed in whole or in part, it was listed on a credit schedule containing credits only, signed by the Commissioner of Internal Revenue and sent to the appropriate collector. The same procedure applied to abatements.

The allowance of credit items on credit schedules by the commissioner was considered final and no additional report was made by the collector to the commissioner subsequent to their allowance by the commissioner.

Claims for refund were not scheduled to the collector. When allowed in whole or in part they were listed on specific refund schedules and transmitted directly to the proper officials of the Treasury Department for the issuance of checks. The result was that it frequently happened that refunds would be allowed and paid while there were outstanding unpaid taxes due from the taxpayer to the Government for other years. To meet this situation, the certificate of overassessment procedure was adopted. It became effective on February 2, 1922. A certificate of overassessment is an allowance document indicating the amount of taxes assessed for a specific year, stating the tax liability and indicating the difference as an overassessment.

28 When certificates of overassessment were issued in regular course they were listed on schedules at that time called "schedules of reduction of tax liability and allowance of claims" and submitted to the commissioner for allowance in groups instead of individually and in order to provide means of referring them to the collectors for proper adjustments. The original form number of these schedules was Form 7777.

After the schedule was signed by the commissioner the original and several copies, together with the original and several copies of each certificate of overassessment listed thereon, were forwarded to the respective collectors of internal revenue with the directions appearing on the schedules, which is as follows:

"Authorization of commissioner

"*To the Collector* ---------- *District:*

"The several amounts herein noted as reduction of tax liability are hereby approved and allowed.

"You will immediately check the items herein against the accounts of the several taxpayers and determine whether the several amounts in which the tax liability has been reduced should be abated in whole or in part and make such abatement as may be warranted by the condition of the taxpayer's account for the year involved.

"If any part of the tax is found to be an overpayment, you will examine all accounts of the taxpayer for subsequent periods and apply such overpayment as a credit against the tax owing (if any) on the taxpayer's account for subsequent periods. (This applies to income, war profits, and excess profits taxes only.)

"The balance (if any) of the overpayment shall be entered in column 12 and placed upon a schedule of refunds (Form 7777–A) and an appropriate memorandum made upon the taxpayer's
29 account. "You will thereupon complete and certify this schedule and Schedule 7777–A and return three copies of each to the Commissioner of Internal Revenue at Washington, making the appropriate entries in your accounts.

Date_____

_____,
Commissioner of Internal Revenue."

The collectors complied with the instructions to first refer to the accounts involved to determine what, if any, portion should be abated as outstanding and not due as indicated by the certificate and to ascertain from the taxpayer's account what amount, if any, had actually been overpaid; if the accounts disclosed in overpayment, then to examine the taxpayer's accounts for other years and to apply any overpayment or so much as might be necessary to the outstanding balance for the other years. After having complied with the commissioner's instructions, the collector certified to the Commissioner of Internal Revenue as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items in this schedule have been checked against the accounts of the respective taxpayer concerned and the amounts indicated have been applied as abatements and credits on their accounts.

"The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date_____

_____,
Collector _____ District."

30 If any portion of the overassessment appeared as refundable, the instructions were to prepare a subsidiary schedule entitled "Schedule of Refunds" on Form 7777–A and return the same to the commissioner. With reference to these items, the certification of the collector was as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items herein listed have been checked against the accounts of the several taxpayers concerned, and the amounts of overpayment to

be refunded by disbursement checks have been found to be as indicated herein.

Date----------

Collector ---------- District."

Upon the receipt by the commissioner of the schedules, the deputy commissioner examined the items appearing on the subsidiary schedule and then certified to the commissioner as follows:

"Certificate of deputy commissioner

"*Commissioner of Internal Revenue:*

"The items herein listed have been examined and the amounts of overpayment to be refunded by disbursement checks as indicated herein have been found due.

Date----------

Deputy Commissioner."

31 The authorization of the commissioner to the disbursing clerk to pay the refundable items is as follows:

"Authorization of commissioner

"*To the disbursing clerk, Treasury Department:*

"The several amounts herein listed as refundable are hereby authorized and allowed.

Date ----------

Commissioner of Internal Revenue."

If the entire amount of the overassessment was either abated or credited, the collector was under instructions to mail the original certificate of overassessment to the taxpayer. If it appeared that any amount was to be refunded, his instructions were to return the original certificate of overassessment to the bureau, with copies of the schedules of overassessments and the original schedule of refunds."

The revenue act of 1921 became effective November 23, 1921. This act for the first time provided for the payment of interest on refunds and credits, if such refunds or credits were allowed on claims filed by the taxpayer. It followed that many credits were allowed without claims and interest was not paid. In other cases claims for credit were allowed on which interest should be paid. The procedure in effect was not complete inasmuch as there had been no instructions to collectors to list credit items on the subsidiary schedules. The subsidiary schedule had been prepared merely to effect payment of refund items. Collectors were accordingly instructed in any case in which any portion of an overassessment was to be either refunded

or credited to return the original certificates of overassessment and to include the list of credit items on the subsidiary schedule.

32 No provision having been made on the subsidiary schedule for a column showing items credited, it was necessary to type the credit items. In order to avoid typing and in order that there might be a complete form on which the commissioner might certify for payment not only refunds but interest on credits and refunds where interest was allowed, the schedule forms were revised and reissued as Forms 7805, 7805–A, and 7809.

Form 7805 replaced Form 7777 and Form 7805–A replaced Form 7777–A. The new Form 7805–A was entitled "Schedule of Refunds and Credits," and an additional printed column was added to the form entitled "Amount Credited." Form 7809, schedule of refunds, was intended for refunds only which were not schedule to collectors and which had not previously been allowed on schedules of overassessment. Forms 7805 and 7805–A are the forms which were in use at the time of the allowances of the credits in question in this case. The practice as to signing the schedules by the commissioner and the action of the commissioner upon the receipt of the schedules from the collector was the same as had existed while Forms 7777 and 7777–A were in use.

The instruction of the commissioner to collectors on Form 7805 was as follows:

"Authorization of commissioner

"*To the collector* _____ *District of* _____

"The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the 'Certificates of Overassessment' or 'Notices of Adjustment of Refund' attached thereto.

"You will immediately check such items against the account

33 of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

"If any part of any such item is found to be an overpayment, if you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war-profits, and excess-profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary schedule of refunds and credits (Form 7805–A).

"The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805–A), referred to above, and an appropriate memorandum made upon the taxpayer's account.

"You will thereupon complete and certify this schedule and the schedule upon Form 7805–A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Date _____

_____,
Commissioner of Internal Revenue."

The certificate of the collector on Form 7805 was as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

"The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date _____

_____,
Collector _____, District of _____."

The certificate of the collector on the subsidiary schedule, Form 7805–A, was as follows, and the certificate of the deputy commissioner to the commissioner also follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date _____

_____,
Collector _____, District of _____."

"Certificate of deputy commissioner

"*Commissioner of Internal Revenue:*

"The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date _____

_____,
Deputy Commissioner."

35 Forms 7805 and 7805–A were returned from the collector for the purpose of checking the adjustments made by the collector. In other words, to see that the collector had not disposed of or applied an amount in excess of the amount overassessed or on the contrary that he had applied the entire amount: and, secondly, in order that the interest on the refunds and credits might be determined, as shown in the proper column on the schedule, and added to the amount of the refund, showing the total amount for which checks should be issued by the disbursing clerk.

In the event that Schedule 7805–A disclosed no refundable items of tax and no interest allowable on credits which had been allowed, the instructions were to mark the original schedule of refunds and credits as cancelled, place it in a special loose-leaf binder for reference, if necessary, to likewise mark the bureau record copy as cancelled, indicate where the original was on file and file the bureau record copy in its proper place, according to the serial number. In these cases, no certificate was signed by the Commissioner of Internal Revenue.

The only comparison which may be made by the commissioner of the schedule of refunds and credits returned by the collector with the schedule of overassessments is to check the figures submitted by the collector for the purpose of determining whether or not he has applied more for abatement, credit, and refund than is shown by the amount of overassessment.

No other action was taken by the commissioner with reference to credits other than what appears on the schedule of overassessments on Form 7805 and with reference to interest on credits that appears on Form 7805–A.

The instructions to the collector were to prepare the subsidiary schedule only in the event that refunds were to be paid as indicated by the schedule. Form 7805–A became a voucher for the dis-
36 bursing clerk. It indicated to the disbursing clerk the names of the taxpayers to whom checks should be drawn and the amount of each check. It served as a voucher supporting payments by the disbursing clerk from the appropriation for paying refunds illegally collected.

Forms 7805, 7805–A, and 7809 have been superseded by the schedule of overassessments, Form 7920, at present in use, which has been in use since January 1927. The certificate of the deputy commissioner to the commissioner is as follows:

"Certificate of deputy commissioner

"*To the Commissioner of Internal Revenue:*

"The tax liability of the respective taxpayers herein listed has been determined in accordance with available facts and the law. The overassessments or reductions of tax liability indicated in column

3, or amounts refundable listed in column 7, are accordingly recommended for allowance.

Date ----------

Deputy Commissioner."

The authorization of the commissioner both to the collector and to the disbursing clerk is as follows:

"Authorization of commissioner

"This schedule must be adjusted and all required steps taken IMMEDIATELY.

"The amounts listed in column 3 as overassessments (or reductions of tax liability) are hereby approved and allowed in the respective amounts indicated, if any.

"The COLLECTOR will immediately check such items against
37 the accounts of the taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part and make such abatements as may be warranted by the condition of the taxpayer's accounts for the years involved. If any part of any such item is found to be an overpayment, the collector will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against income, war profits, or excess profits taxes due, if any, making the appropriate entries in his accounts. The amounts credited will be entered by the collector in column 6. The balance, if any, of the overpayment refundable will be entered in column 7 and an appropriate MEMORANDUM made upon the taxpayer's account showing the refund and the amount refunded. The collector will thereupon complete and certify this schedule and return the same, with the necessary copies, to the Commissioner of Internal Revenue.

"The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.

"The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in column 9 or 10, or both.

Date ----------

Commissioner of Internal Revenue."

The certificate of the collector is as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items on this schedule have been checked against the
38 accounts of the respective taxpayers concerned. Abatements and credits in their accounts have been applied in the amounts

indicated, and net amounts refundable have been determined as shown in column 7.

Date _____

_____

Collector _____ *District of* _____."

This procedure dispenses entirely with the subsidiary schedule or any signature by the commissioner or deputy commissioner following the certification by the collector. The collector, as previously, on Form 7920 signs a certificate including the statement "Abatements and credits in their accounts have been applied in the amounts indicated, and net amounts refundable have been determined, as shown in column 7." This appears on the original schedule and not on the subsidiary schedule.

In the early practice, before the commissioner could prepare a schedule of credits or a schedule of refunds or a schedule of abatements, he had to have information from the collector's office as to what taxes were due and how much the taxpayer had paid. Before the commissioner issued a schedule of credits the commissioner had to know how much the taxpayer had overpaid on the year in question. An overpayment would not be allowed to be credited without evidence of the actual overpayment. The allowance of an overassessment was in the nature of a sort of half-litigated question. The determination was in the nature of a judgment which was sent to the collector to make the proper financial adjustment upon it. If credits were to be allowed (and they were allowed only on the basis of claims for credit filed by the taxpayer) the instructions to the collector so indicated and the collector then made the adjustment.

Under the procedure which was in effect in 1924 when the present case was considered the commissioner did not know
39 the status of the account of the taxpayer. He did not have in his office in Washington the necessary information to allocate the amount of overassessment as between amount to be abated, amount to be credited, and amount to be refunded. The record in this case indicated that there was an outstanding balance and that some credit should be made if there was an overpayment. In the usual case the commissioner does not know the status of the taxpayer's account. He does not ordinarily even know whether there has been an overpayment, and he probably did not know in this case. Ordinarily the amount to be abated, the amount to be credited, and the amount to be refunded are determined for the first time in the collector's office after he has received the schedule of overassessments and has had the accounts of the taxpayer examined. There is nothing to indicate that this was not true in the present case. The actual entry in the accounts showing application of the credit on the outstanding tax is made in the collector's office because the accounts are maintained there. The Washington office

does not have a copy of the accounts. When the collector has segregated and determined how much the overassessment is to be abated and how much credited, he makes the application and certifies to the commissioner on the schedule of overassessments that he has done so. This is the certificate which in the present case is dated July 14, 1924. (See agreed statement of facts, Paragraph XIII, Exhibit 3.) He also sends to the commissioner the subsidiary schedule of refunds and credits. This also was signed by the collector under date of July 14, 1924. (Agreed statement of facts—Ibid.) When the subsidiary schedule reaches Washington and figures are checked to see that the three figures together add up to the amount of the overassessment, the commissioner signs the authorization to the disbursing clerk to issue checks covering the payments listed on the subsidiary schedule.

40 Under the regular procedure there is no other communication, authorization, or instruction from the commissioner to the collector with reference to the overassessments except what is contained on the schedule of overassessments. This was true in the present case.

After the allowance of the overassessment there remains just routine matter in applying the overassessment to the status of the taxpayer's account. The law requires an overpayment to be credited to outstanding taxes. The commissioner's instruction to the collector on the schedule of overassessments is that he shall apply the overassessment to the taxpayer's account.

There is no record of the actual date of application of the credit on the collector's books. The official application of a credit by the collector is the date on which he signs the subsidiary schedule. This date in the present case was July 14, 1924.

It appeared, also subject to the objection of the petitioner, that the bureau has uniformly held that the date of the allowance of a credit is the date upon which the commissioner signs the schedule of overassessments and that all interest adjustments, so far as made voluntarily by the bureau, have been made under this rule.

Statements of fact in the opinion herein are to be considered as part of these special findings.

JAMES M. MORTON, JR.,
District Judge.

On the said 24th day of June, a bill of exceptions is filed by the defendant and allowed by the court.

41 In United States District Court

Agreement for judgment

Filed June 24, 1929

It is hereby agreed that judgment may be entered for the petitioner in the amount of $11,592.18.

TYLER, EAMES, WRIGHT & HOOPER,
BURTON E. EAMES,
Attorney for Petitioner.
FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.,
Attorneys for Defendant.

In United States District Court

Judgment

Thereupon, to wit, June 24, 1929, it is considered by the court, on the findings of the court, the Honorable James M. Morton, jr. district judge, sitting, that the Iron Cap Copper Company, petitioner, recover of the said United States, respondent, the sum of eleven thousand five hundred ninety-two dollars and eighteen cents ($11,592.18).

In United States District Court

Defendant's bill of exceptions

Filed and allowed June 24, 1929

This is a petition by the Iron Cap Copper Company against the United States of America for the recovery of interest on certain credits against an overassessment of income and profits taxes for the year 1918, said overassessment being in the amount of $180,322.66. The pleadings are a part of this record and may be referred to as a part of this bill of exceptions. The case was tried before Morton J., without a jury upon an agreed statement of facts and additional oral testimony. The court made special findings of fact. The
42 agreed statement of facts and the special findings of fact are by reference incorporated into and made a part of this bill of exceptions.

The above are all the material facts in the case. At the trial the defendant filed a motion for judgment and requested the court to find as a matter of law as follows:

"1. That the sum of $102,931.89 of the total overassessment of $180,322.66 for the year 1918 credited against taxes due for other

years was allowed as a credit by the Commissioner of Internal Revenue on March 29, 1924."

The court, in an opinion handed down on April 3, 1929, which is made part hereof, held that the credit was not allowed when the certificate of overassessment was signed by the commissioner but when he signed the subsidiary schedule, and ordered judgment for the petitioner.

The defendant being aggrieved by the ruling of the court as hereinbefore set forth and its refusal to grant the defendant's request for findings of law, now excepts to said rulings and brings this bill of exceptions and prays that it may be allowed.

By its attorneys,

FREDERICK H. TARR,
United States Attorney.
By J. DUKE SMITH,
Special Asst. to the United States Attorney.

The foregoing bill of exceptions may be allowed.

TYLER, EAMES, WRIGHT & HOOPER,
BURTON E. EAMES,
Attorney for Petitioner.

The foregoing bill of exceptions is allowed this 24th day of June, 1929.

JAMES M. MORTON, Jr., *D. J.*

43 In United States District Court

Memorandum re Defendant's Exhibit 1

[MEMORANDUM. Copy of Treasury Department Form 7920, schedule of overassessments, is here omitted by agreement of counsel, the original to be transmitted with this Transcript of Record. JAMES S. ALLEN, *Clerk.*]

Defendant's Exhibit 2

3463 Law. Deft.'s Ex. 2, J. E. G., jr., 3/29/29

(T. D. 3260)

Refund, credit, and abatement adjustments

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and others Concerned:

For the more expeditious handling of refund, credit, and abatement claims, and to provide for the refund or credit of overpayments of revenues where no claims have been filed, the following procedure is established to become effective December 16, 1921:

1. Reduction of internal revenue assessments and adjustments of overpayments of revenues will hereafter be accomplished in one of three ways:

(a) On the basis of an application submitted by a taxpayer on Form 46, 47 or 47A, together with appropriate supporting evidence to be filed in the office of the collector of internal revenue of the district in which the tax is assessed.

(b) On the basis of a certificate of overassessment prepared by the appropriate administrative unit in the bureau in each case in which an overassessment of tax is disclosed through the audit of a return.

(c) On the basis of a blanket claim (Form 751); a schedule of taxes found to be uncollectible (Form 53); or a schedule of duplicate payments and overpayments due to obvious error on all forms of taxable returns (blanket Form 47 or 47B) submitted by a collector of internal revenue. Form 751 will be used only in cases where credit balances exist, regardless of the class of return filed.

2. Claims of taxpayers and the items of collector's blanket claims (if and when found by an administrative unit to be allowable), and certificates of overassessment (upon final approval), and items credited in account 9 (e) shall be scheduled on Form 7777 and submitted to the Commissioner of Internal Revenue for approval. Upon approval by the commissioner, such schedules shall be forwarded to the collectors of internal revenue of the several districts.

3. Upon receipt of such schedules the several collectors of internal revenue shall immediately check the items thereon against the accounts of the several taxpayers concerned and determine whether the several amounts of overassessments should be abated, refunded, or credited against assessments remaining unpaid. Only overpayments of income and profits taxes may be credited against unpaid assessments of such taxes (section 252 of the revenue act of 1921). Whenever, on such examination of a taxpayer's account and of the items in account 9 (e), a collector finds an amount of overpayment, he shall examine all accounts of the taxpayer for subsequent periods and determine and certify the amount, if any, of such overpayment that shall be credited against the taxpayer's account for any subsequent year or years and the amount of such overpayment for which a disbursement check should be issued. He shall thereupon make appropriate entries upon all copies of the schedules and upon the assessment list, indicating the application made by him of the several amounts of overassessment and overpayment (whether by abatement or by credit), and the amounts to be refunded; summarize the amounts applied in abatement, the amounts of overpayment and of credit; certify all copies of the schedule; retain one copy and forward the others to the Commissioner of Internal Revenue at Washington.

4. The collector shall at the same time prepare (in quadruplicate) on Form 7777A a schedule of net refundable amounts for which dis-

bursement checks are to be issued; retain one copy of the schedule for his record; certify the other three copies and forward them together with the copies of the schedules on Form 7777 to the Commissioner of Internal Revenue at Washington.

5. Upon application of the several amounts of overassessment and overpayment as abatements or credits, and the determination of the amounts to be refunded, the collector of internal revenue shall make the appropriate entries upon the certificates of overassessment which will be forwarded to him with the schedules; and transmit appropriate copies of such certificates to the several taxpayers as notification of the action taken by the collector in the way of abatement or credit; provided, however, that in those cases in which any amount of overpayment is to be refunded, the collector shall not send the certificate of overassessment to the taxpayer, but shall make the appropriate entries thereon and forward such certificates of overassessment with the schedule of refundable amounts to the Commissioner of Internal Revenue at Washington.

46 6. Upon completion and certification of a schedule, the collector of internal revenue shall credit the accounts with the amounts abated and credited and make proper notations of the refunds. The proper account 6 will be credited, and account 18 will be debited with the total amount abated and applied as credits for the reduction of tax liability. Account 9 (e) will be debited with the total amount applied as credits from items in account 9 (e). The procedure as outlined in section 583 of the Internal Revenue Manual, in cases of this nature, should be carefully followed.

7. Upon receipt of properly certified copies of Form 7777 and 7777A the commissioner shall cause to be made the necessary entries in the control accounts of the Bureau of Internal Revenue, and the necessary allowance documents prepared. Upon receipt of these schedules the accounts unit of the Bureau of Internal Revenue shall retain one copy of Form 7777 for its records and forward a copy to the General Accounting Office of the Comptroller General as a voucher for the collection accounts of the collector. He shall retain one copy of the schedule of refunds Form 7777A for his records; make the necessary entries upon and forward two copies with the allowance documents to the commissioner for his approval.

8. Upon approval of schedules of refunds Form 7777A the commissioner will forward such schedules with the allowance documents to the disbursing clerk of the Treasury Department.

9. Upon receipt of properly approved schedules and allowance documents, the disbursing clerk shall prepare disbursement checks in the amounts of the several net refundable items in favor of the respective taxpayers against whose accounts net refundable amounts shall have been allowed by the commissioner; forward such

47 checks, together with the certificates of overassessment (which will be transmitted to him) to the respective taxpayers; retain one copy of this schedule for his record; and transmit the other copy

to the General Accounting Office of the Comptroller General as a voucher for his disbursement account.

D. H. BLAIR,
Commissioner of Internal Revenue.

Approved December 8, 1921.
A. W. MELLON,
Secretary of the Treasury.

In United States District Court

Opinion

April 3, 1929

MORTON, J. This is an action to recover interest on a credit allowed by the Government against certain additional income taxes assessed against the plaintiff. The case turns on when the credit was allowed. The Government says on 29 March, 1924; the plaintiff on either 14 July, 1924, or 7 August, 1924. Between the first and the second of these dates the revenue act of 1924 had gone into force, on 2 June, 1924, superseding the act of 1921. If the allowance was made during the earlier act the plaintiff is not entitled to interest on the credit; if made during the act of 1924, it is entitled to it.

Under both acts questions of overassessment were determined in the bureau at Washington, while the individual accounts with the taxpayers were kept at the offices of the district collectors. When a decision was made by the commissioner in favor of a taxpayer, i. e., that there had been an overassessment, this determination was entered on an overassessment sheet which was sent to the collector of the proper district, with instructions to adjust the matter with the taxpayer, either by an abatement of the taxes complained of,
48 or by a credit on taxes outstanding, or by a refund of the amount illegally collected. The collector upon receipt of this action by the bureau proceeded to make the requisite adjustment of the taxpayer's account. In the present case it involved a substantial credit, amounting to over $100,000.00, interest on which forms the subject matter of the present action. After making the proper adjustment of the taxpayer's account the collector forwards to the commissioner a schedule showing what has been done. The collector's action as to a credit is final; but if payments of any kind are called for, the commissioner on receiving the schedule from the collector has the figures checked, and thereupon makes a "subsidiary schedule," which the commissioner signs and which is directed to the disbursing clerk. In effect it amounts to an order for the payment of the money. No allowances of interest are ever made by the collector. Interest on credits is dealt with only at the bureau in Washington and it is always paid like a refund, i. e., it goes on a subsidiary schedule which is approved by the commissioner.

The contention of the Government is that the action by the commissioner, in deciding that there had been an overassessment was in

law the allowance of the credit; that therefore the allowance was made during the act of 1921; and that therefore interest upon the credit is not recoverable. The difficulty with this argument is that it ignores the decision of the Supreme Court of the United States in Girard Trust Company in 270 U. S. 163, and of this court in Boston Buick Company vs. United States in 27 F. 2, 395. In the first of these cases it was decided, as to refunds, under the act of 1921, which on the point under discussion is substantially the same as the act of 1924, that the effective date was that on which the commissioner signed the subsidiary schedule; that said schedule constituted the order for the payment of the money; and that up to that time
49 the taxpayer's right to recover had not become fixed. In the Boston Buick case Judge Brewster held that the same principle applied to interest on a credit. The practice of the department, treating the commissioner's decision that there had been an overassessment as the allowance of a refund, was expressly disapproved in the Girard Trust Company case, supra, p. 170. The plaintiff's right to recover interest does not become fixed until it is included in a subsidiary schedule signed by the commissioner—exactly like money paid on refunds. If the commissioner's action in signing the subsidiary schedule is the decisive step as to one, it seems to me to be equally the decisive step as to the other.

Judgment for the plaintiff in United States District Court

Defendant's petition for appeal and order allowing same

Filed June 27, 1929

United States of America, defendant, appellant herein, feeling aggrieved by the order and judgment made and entered in this court on the twenty-fourth day of June, 1929, in favor of the plaintiff and against the defendant, hereby appeals from said order and judgment to the United States Circuit Court of Appeals for the First Circuit for the reasons set forth in the assignment of errors filed herewith.

Wherefore your petitioner prays that the appeal be allowed and citation issued as provided by law, and that a transcript of the record, proceedings, and all other papers on which said judgment and order were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the First Circuit under the rules of said court and in accordance with the law in such case made and provided.

FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.

Petition for appeal allowed.

JAMES A. LOWELL, *U. S. D. J.*

JUNE 27, 1929.

50–51 In United States District Court

Defendant's assignment of errors

The defendant in this action in connection with its petition for appeal makes the following assignment of errors which it avers occurred in the trial of the case, to wit:

1. The court erred in ruling that the credit was allowed when the Commissioner of Internal Revenue signed the authorization to the disbursing clerk, Treasury Department, appearing on schedule of refunds and credits, Form 7805–A, to pay refundable items and accrued interest.

2. The court erred in refusing to rule that the credit was allowed when the Commissioner of Internal Revenue signed the authorization of the commissioner to the collector of internal revenue appearing on schedule of overassessments, Form 7805.

3. The court erred in ruling that the petitioner was entitled to recover.

Wherefore the defendant prays that the judgment of the district court be reversed.

By its attorneys,

FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.

[Citation in usual form showing service on Burton E. Eames omitted in printing.]

52 [Clerk's certificate to foregoing transcript omitted in printing.]

53–54 *Minute entry of argument and submission, October 3 and 4, 1929, omitted in printing*

In United States Circuit Court of Appeals, First Circuit

Judgment

November 5, 1929

This cause came on to be heard October 3 and 4, 1929, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel:

Upon consideration whereof, It is now, to wit, November 5, 1929, here ordered, adjudged, and decreed as follows: The judgment of the district court is affirmed.

By the court,

[SEAL.] ARTHUR I. CHARRON, *Clerk.*

55 In United States Circuit Court of Appeals, First Circuit

October Term, 1929

No. 2344

UNITED STATES OF AMERICA, RESPONDENT, APPELLANT

v.

BOSTON BUICK COMPANY, PETITIONER, APPELLEE

No. 2377

SAME v. IRON CAP COPPER COMPANY

Appeals from District Court of the United States for the District of Massachusetts

Before ANDERSON, WILSON, and HALE, JJ.

(35 Fed. 2d 560)

Opinion filed November 5, 1929

WILSON, J. These two cases are before this court on appeal by the United States from decisions of the District Court of Massachusetts. As the same question is involved in both cases and they were argued together, one opinion will suffice to dispose of them.

The material facts in the Iron Cap Copper Company creating the issue here raised are as follows:

An examination and audit of the tax returns of the appellee for the year 1918 disclosed that the appellee had been overassessed in that year to the amount of $180,322.66. On March 29, 1924, the commissioner approved a schedule of overassessments con-
56 taining a list of taxpayers who had been overassessed for the year 1918, in which was included the overassessment of the appellee in the above amount.

The schedule was made out on a form then in use in the department and known as Form 7805, which was forwarded to the collector of internal revenue at Boston with the following general instructions which were printed thereon:

"You will immediately check such items against the accounts of the several taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

"If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against taxes due, if any"; and with further instructions to enter such credits and any balance in

appropriate columns of the schedule of overassessments and in a subsidiary schedule then in use and designated as Form 7805A, and return both forms to the commissioner's office.

After the collector had conformed to these instructions, it was found that the status of the taxpayer's account required an abatement to the amount of $48,539.94, and that there had been an overpayment by the appellee of $131,782.72. He therefore credited against taxes previously assessed against the taxpayer and unpaid, the sum of $102,931.89, which left a balance to be refunded to the taxpayer of $28,850.83. In accordance with above directions of the commissioner, he so reported to the commissioner on July 14, 1924, on Form 7805A, and on August 7, 1924, the deputy commissioner reported to the commissioner that the amount reported by the collector as refundable had been found correct, and together with the accrued interest set forth in the subsidiary schedule on Form 7805A was due the taxpayer. Whereupon the commissioner authorized the disbursing clerk in the Treasury Department to pay the refundable amount to the plaintiff.

57 In the Boston Buick Company case the material facts are as follows:

On the fourteenth day of March, 1924, the commissioner, on Form 7805, certified to the collector at Boston that the plaintiff had been overassessed for the year 1918 to the amount of $23,881.08. The collector, following the general directions contained in Form 7805, reported back July 11th, 1924, that there had been an overpayment by this taxpayer equalling the total amount of the overassessment, which he credited on other taxes due from the taxpayer. On July 31 the deputy commissioner and the commissioner signed the usual blanks contained in Form 7805A directing the payment of any sum disclosed by the reports of the collector as refundable.

Interest in the Iron Cap Copper Company case was allowed and paid on the amount refunded in accordance with the decision of the Supreme Court in the case of Girard Trust Company v. United States, 270 U. S. 163, but no interest was allowed on the sums credited on other taxes due from the taxpayer, either in the Iron Cap Copper Company or the Boston Buick Company. These actions are respectively brought to recover interest on the credits which the plaintiffs say should be computed under section 1019 of the revenue act of 1924, the relevant part of which reads as follows:

Sec. 1019. "Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected * * * interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum," etc.

The issue in both cases is whether the credits were allowed when the commissioner on March 14 and on March 29, 1924, certified to the collector on Form 7805 that there had been an overassessment and directed him to determine what, if any, part of the taxpayer's assessment should be abated, and if there was an overpayment what,

if any, part should be credited to other payments due from the taxpayer; or whether the credits were allowed when the collector made his report of the status of the taxpayer's account and the
58 abatements and credits allowed by him, and the commissioner, expressly or impliedly, approved his report.

The date of the allowance of the credits is the crux of both cases, since if the allowance of the credits within the meaning of the revenue acts was made when the commissioner certified to the collector the amount of the overassessments on March 14 and March 29, 1924, interest on credits must be computed under section 1324 of the revenue act of 1921, under which it is agreed by the taxpayer that no further interest should be allowed; but if the credits were not allowed until the collector had examined his accounts and determined the amount of the overpayment, if any, and the amounts then due from the taxpayer for other periods, which it is agreed was on July 11, 1924, in the Boston Buick case, and on July 14th in the Iron Cap Copper Company case, or until he had made his report to the commissioner, and it had expressly or impliedly received his approval on July 31, 1924, in the Boston Buick Company case, and on August 7th in the Copper Company case, then it is admitted by the Government that under the decisions of the Supreme Court, Blair v. United States ex rel. Birkenstock et al., 271 U. S. 348; United States v. Magnolia Petroleum Co., 276 U. S. 160, interest should be computed under section 1019 of the revenue act of 1924, which became effective June 2, 1924, and that under section 1019 there would be due the plaintiff, Iron Cap Copper Company, as interest, the sum of $11,592.18, and to the Boston Buick Company the sum of $6,675.83.

The court below found for the plaintiff in each case, and in the above amounts. This court is of the opinion that the contention of the plaintiffs must be sustained and the appeals dismissed.

Prior to the revenue act of 1926 there is nothing on which to base the contention of the Government that the allowance of an overassessment is an allowance of credits, except a regulation of the Treasury Department and its persistent practice in so holding.

The commissioner, who is the final arbiter in such matters, when he determines that there has been an overassessment, has no knowledge of what the status of any taxpayer's account is,
59 whether it will disclose that there has been an overpayment, and, if so, whether there will be any sums due from the taxpayer for other periods to which the overpayments should be credited, or whether the overpayment must all be refunded. While Form 7805, containing the schedule of overassessments, contains a direction to the collector if any overpayment is found, to apply first to other taxes which may be then due from the taxpayer for other periods and enter any balance in appropriate columns in Form 7805 and 7805A as refundable, yet the action of the collector is not final.

The Supreme Court in Girard Trust Co. v. United States, speaking through its Chief Justice, said:

"The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and a refund or credit should be granted, and when he has made that decision finally, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section."

Again:

"The findings and the exhibits show that the course of business is that the collector on receiving from the commissioner the schedule as to the overassessment, examines his books and reports back to the bureau the amount which should be credited on taxes due and the amount to be refunded, that this is examined by the assistant commissioner and then is delivered to the commissioner, who makes it effective by his approval."

While it is true that the issue involved in the Girard Trust Company case related only to the date of the allowance of a refund, the court, though by way of dictum, as it may be argued, also as definitely fixed the time of the allowance of credits. Its dictum as to the time of allowance of credits was, we think, an inevitable conclusion from its finding as to the time of allowance of a refund; since the amount to be refunded is absolutely determined when the credits are allowed. It is no answer to say that the directions in Form 7805 are authority to the collector to apply any overpayment on
60 any unpaid taxes for other periods and is therefore an allowance of such credits as the collector may see fit to make. It would be a strained construction of the commissioner's directions to the collector to hold that he thereby allowed and approved something of which he had no knowledge and could have none until a report was received back from the collector.

The Government, however, urges that the regulations of the Treasury Department and its practice has established a different rule as to credits, which should have great weight in construing these statutes; but it also, prior to the decision in the Girard Trust Company case, had the same regulation as to the date of allowance of refunds; yet the court in that case held that a regulation of the Treasury Department and its practice in this respect was not in accord with the statute, and that it did not control the plain effect of the acts of the commissioner and the collector. No good reason is now shown why the department regulation as to the allowance of credits should control what appears to be the only reasonable inference to be drawn from the facts.

It is also urged by the Government that since Congress, presumably in view of the court's decision in the Girard Trust Company case, has by its fiat in the revenue act of 1926 fixed the date of the allowance of refunds as the date of the issuing of the schedule of overassessments by the commissioner, and made no provision for fixing the date of the allowance of credits, that it is in effect a recognition by Con-

gress of the regulation and practice of the department as to the correct construction of the prior acts and of the commissioner's instructions to the collector as to the date of the allowance of credits.

How the Supreme Court may construe the effect of the revenue act of 1926 as to the time of allowance of future credits we cannot anticipate; but so long as its decision stands as to the time of allowing a refund prior to the enactment of the 1926 act, we think that the time of allowance of credits, if any, at least prior to that act, must be the same as that of the allowance of a refund or when the commissioner or his deputy approved the collector's report of his doings on Form 7805A.

The decision in Penn Smokeless Coal Co. v. United States,
61 decided in the western district of Pennsylvania, January 3, 1929, is of little weight to the contrary, inasmuch as the sitting judge in that case inadvertently misconstrued the opinion of the Chief Justice in the Girard Trust Company case.

The Court of Claims, however, in the case of Swift & Co. v. United States, decided May 6, 1929, followed the opinion of the Supreme Court as applied to the allowance of credits.

Even if large sums have been credited to taxpayers without the signature of the commissioner on the collector's report after it is returned to his office, it can not change the law, though it does not follow from facts stated by counsel in argument that the commissioner's assent to the report of the collector may not in each case have been implied.

In United States Circuit Court of Appeals

The judgments of the District Court are affirmed.

Order staying mandate

Thereafter, to wit, on January 2, 1930, upon motion by appellant, assented to, mandate was stayed until further order of court.

[Clerk's certificate to foregoing transcript omitted in printing.]

62 Supreme Court of the United States

Order allowing certiorari

Filed March 17, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1930